TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL MEMORANDUM

HB 1242 – SB 1360

February 10, 2014

SUMMARY OF ORIGINAL BILL: Grants the Commissioner of the Department of Financial Institutions (DFI) the power to enforce any provision of Tennessee Code Annotated, Title 47, against any entity regulated by the Commissioner.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – $31,300/One-Time/DFI
$2,031,600/Recurring/DFI

SUMMARY OF AMENDMENT (012395): Amendment 012395 deletes all language after the enacting clause. Prohibits any person from engaging in business of litigation financing without obtaining a certificate of registration from the Secretary of State (SOS). Requires each application for a certificate of registration to be in writing and made under oath to the SOS, in a form prescribed by the SOS and to include specified information. Requires each application for a certificate of registration or renewal to be accompanied by a non-refundable fee prescribed by the SOS, which shall constitute the registration fee for the first registration year and shall be in an amount that provides for the cost of administering the registration of litigation financiers. Requires the SOS to issue a certificate of registration to any applicant who provides the required information and pays the required fee. Establishes requirements to be fulfilled by litigation financiers engaged in litigation financing. Establishes prohibitions for litigation financiers engaged in litigation financing.

Requires litigation financing contracts to contain specified disclosures, which shall constitute material terms of the contract. Establishes that any violation of this chapter will make the contract unenforceable by the litigation financier, the consumer or any successor-in-interest to the litigation financing contract. Grants the power and authority to the Attorney General to enforce the provisions of this chapter in his or her discretion. Authorizes the Attorney General to enforce any violation of this Chapter, after consultation with the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance (the Director). Authorizes any person aggrieved by a litigation financier in connection with litigation financing to file a written complaint with the Director and authorizes the Director to subpoena witnesses, administer oaths, examine any individual under oath, and compel the production of records, books, papers, contracts, or other documents relevant to the investigation. Authorizes the Director to, in consultation with the SOS, suspend any certificate of registration issued under this Chapter if the Director determines that the litigation financier failed to comply with a subpoena. Requires the party found to be in violation of this Chapter to pay, in additional to other fees and taxes, the reasonable and actual expenses for any inspection or compliance examination conducted, and the actual expenses incurred for out-of-state investigation, examination and inspection of books and records and papers maintained by the litigation financier out of state.

Requires all consumers entering into litigation financing agreements to pay the litigation financier an annual fee of up to 10 percent of the original amount of money provided to the consumer for the litigation financing transaction, not to be charged more than one time each year with regard to any single legal claim, regardless of the number of litigation financing transactions that the litigation financier enters into with the consumer with respect to such legal claim. Limits litigation financing transactions to a maximum term of three years and limits the yearly fee, including any underwriting and organization fees, and any other charges, fees or consideration, to a maximum of $360 per year, up to a maximum of 3 years, for each $1,000 of the unpaid principal amount of the funds advanced to the consumer. Establishes that the maximum yearly fee shall not include the annual fee of up to 10 percent of the original amount of money provided to the consumer for the litigation financing transaction. Prohibits litigation financiers from entering into an agreement with a consumer that has the effect of incorporating the consumer's obligations to the litigation financier that are contained in the original litigation financing transaction into a subsequent litigation financing transaction.

Requires the Division of Consumer Affairs, in cooperation with the SOS, to provide a report on litigation financing to the Governor, the Speakers of the Senate and House of Representatives, the Consumer and Human Resources Committee of the House of Representatives, and the Commerce and Labor Committee of the Senate by January 31, 2015, and annually thereafter.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Revenue –
$10,000/Secretary of State/FY14-15
$5,000Secretary of State/FY15-16 and Subsequent Years

Increase State Expenditures –
$10,000/Secretary of State /FY14-15
$5,000/Secretary of State /FY15-16 and Subsequent Years

Assumptions for the bill as amended:

- The SOS will register 20 litigation financiers and will renew certificates of registration on an annual basis. The certificate of registration fee and renewal fee will be established by the SOS but is estimated to be approximately $500 in the first year and $250 in subsequent years.
- The resulting increase in state revenue is estimated to be $10,000 (20 financiers x $500 fee) in FY14-15 and $5,000 in FY15-16 and subsequent years.

- According to the SOS, there will be a one-time increase in state expenditures of $5,000 to develop a Litigation Financing Registration System. Any increase in state expenditures for training of staff on the new system is estimated to be not significant and can be accomplished utilizing existing resources.
- According to the SOS, there will be a recurring increase in state expenditures of $5,000 to compile and publish the annual report.
- The total increase in expenditures is estimated to be $10,000 ($5,000 + $5,000) in FY14-15 and $5,000 in FY15-16 and subsequent years.
- Establishing requirements, prohibitions, and contract specifications for litigation financiers, limiting the litigation financing agreements to a maximum term of three years, and limiting the fees, and other charges as specified may result in a fiscal impact that will be borne by the private sector. Any fiscal impact to state or local government is estimated to be not significant.
- Any increase in expenditures to the Division of Consumer Affairs to investigate consumer complaints is estimated to be not significant and can be accommodated using existing resources without an increased appropriation or reduced reversion. However, if any such increase in expenditures was to occur, the party found to be in violation will be required to cover it.
- Any increase in state expenditures to the Attorney General to enforce the provisions of this chapter, in his or her discretion, is estimated to be not significant and can be accommodated within existing resources without an increased appropriation or a reduced reversion.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Lucian D. Geise, Executive Director

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